

ADOPTED

FEBRUARY 16, 1989

BOSTON REDEVELOPMENT AUTHORITY

SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF MBH ASSOCIATES (FORMERLY B&M ASSOCIATES) FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO BE UNDERTAKEN AND CARRIED OUT BY A LIMITED PARTNERSHIP FORMED UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 109, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER CHAPTER 121A.

A. Prior Proceedings. Reference is made to a certain "Report and Decision on the Application of B&M Associates for the Authorization and Approval of a Project under Massachusetts General Laws (Ter. Ed.) Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, to be undertaken and carried out by a Limited Partnership organized pursuant to M.G.L. c. 109, and Approval to act as an Urban Redevelopment Limited Partnership under said Chapter 121A" (the "Report and Decision"), adopted by vote of the Boston Redevelopment Authority (the "Authority") at a meeting held January 24, 1980. Such vote was approved by the Mayor of the City of Boston (the "Mayor") on February 12, 1980 and the vote as approved was filed with the City Clerk of the City of Boston (the "City Clerk") on February 19, 1980. The Report and Decision was amended by a First Amendment thereto adopted by vote of the Authority at a meeting on March 20, 1980. Such vote was approved by the Mayor on March 27, 1980, and the vote as approved was filed with the City Clerk on March 27, 1980. The First Amendment changed only the name of the Urban Redevelopment Limited Partnership authorized to undertake the Project from B&M Associates to MBH Associates. The Report and Decision, as amended by said First Amendment, is hereinafter referred to as the "Amended Report and Decision". Capitalized terms not defined herein shall have the meanings set forth in the Amended Report and Decision which is incorporated herein by reference.

B. Second Amendment to the Application. By a Second Amendment to the Application, dated October 11, 1988 (the "Second Amendment Application"), MBH Associates has sought authorization and approval from the Authority for certain changes to the Amended Report and

Decision. The Second Amendment Application is incorporated herein by reference. As supplementary material, MBH Associates has filed with the Authority a copy of a certain Memorandum of Understanding by and between MBH Associates and the Fenway Community Health Clinic, Inc. and dated as of January 31, 1989, and (2) a certain document, entitled "Disclosure Statement Concerning Beneficial Interests Chapter 121A Projects In the City of Boston", dated February __, 1989 (collectively (1) and (2) hereinafter are referred to as the "Supplementary Material"). The Supplementary Material is also incorporated herein by reference.

C. Public Hearing. On September 29, 1988, the Authority by vote authorized the advertisement of a notice of a public hearing on the Second Amendment Application to be held October 13, 1988 at 2:00 PM in the Authority's Board Room, Room 600, 9th Floor, City Hall. A notice of the public hearing was published on October 7, 1988 in the Boston Herald, a daily newspaper of general circulation. On October 13, 1988, the public hearing was held and at the close of the hearing (the "Public Hearing") the Authority by vote authorized the preparation of a favorable amendment to the Amended Report and Decision.

D. Authority Action. In acting hereunder, the Authority has considered the Second Amendment Application itself, all documents and exhibits filed therewith and referred to therein, the oral evidence and other information presented at the Public Hearing, and all Supplementary Material as filed, sufficient in the Authority's judgment, to enable it to act hereunder.

E. Decision. The Authority hereby acts as follows:

1. Approval. The Second Amendment Application is hereby approved and the Amended Report and Decision is hereby further amended to the extent hereinafter set forth. If there is any inconsistency between the Second Amendment Application and this document (the "Second Amendment"), the provisions of this Second Amendment shall govern.

2. General Findings. The Authority hereby finds and determines that: (a) this Second Amendment does not constitute a fundamental change to the Project in accordance with Chapter 652 of the Acts of 1960, Section 13A, as amended, on the basis that the original Project, as described in the Amended Report and Decision, has not been changed in any material respect; (b) except to the extent inconsistent with the provisions of this Second Amendment, all of the findings, determinations, approvals and consents as set forth in the Amended Report and Decision are hereby ratified and confirmed; (c) this Second Amendment conforms to and complies with the provisions of Chapter 121A of the General Laws, as amended (Chapter 121A"), Chapter 652 of the Acts of 1960, as amended ("Chapter 652"), and the Authority's "Rules and Regulations Governing 121A Project In The City of Boston" ("Rules and Regulations"); and (d) any procedural or other requirements of the Rules and Regulations which may not have been complied with in the Second Amendment Application or the Authority's proceedings are hereby waived.

3. Changes to Amended Report and Decision. The Authority hereby amends the Amended Report and Decision as stated below:

a. By deleting the tenth paragraph of Section B, entitled "Project", in its entirety and inserting in place thereof the following paragraph:

"The parking lot at 5-11 Haviland Street (the "Haviland Street Property"), located directly behind the four buildings at 1078-1080, 1088-1094, 1100 and 1120-1130 Boylston Street (collectively, the "Boylston Street Properties), presently serves the residential and commercial tenants of the Project. In accordance with this Second Amendment, the Haviland Street Property may be improved by MBH Associates through the construction of one building containing a below grade parking facility and above a two-story health clinic and related institutional use facility with provision to add a third story, as more fully described hereafter in Section D."

b. By deleting the first paragraph of Section D, entitled "Project Area", in its entirety and inserting in place thereof the following paragraph:

"The Project, as described in the original Application, the Amended Report and Decision, and as changed by this Second Amendment, constitutes a "Project" within the meaning of Section 1 of Chapter 121A of the General Laws, as amended, providing as it does for the rehabilitation of the four Boylston Street Properties and the construction of one building (the "Building") containing a below grade parking facility (the "Garage Component") and a two-story health clinic and related institutional use facility (the "Clinic Component"). on the Haviland Street Property. Subject to the provisions of the Regulatory Agreement required by this Second Amendment, upon the recording in the Suffolk County Registry of Deeds of both a Certificate of Completion for the Building as issued by the Authority to MBH Associates and an instrument of conveyance in connection with the transfer of fee title to the Clinic Component from MBH Associates to the Fenway Community Health Clinic, Inc., as hereafter described, the Clinic Component shall be severed from the Project Area and released from all applicable restrictions, benefits and exemptions imposed or conferred by Chapter 121A or Chapter 652. Specifically, the Clinic Component will no longer be exempt from taxes, excises or assessments, as set forth in Section 10 of Chapter 121A, and shall thereafter be subject to any and all real and personal property, taxes, excises and assessments to the extent imposed by Chapter 59 of the General Laws, as amended, and other applicable statutes and laws."

c. By deleting the fifth paragraph of Section D in its entirety and inserting in place thereof the following paragraph with five sub-paragraphs:.

"The Project Area also contains a parking lot on the Haviland Street Property, directly behind the Boylston Street Properties, which may be improved as follows:

(1) MBH Associates may construct the Building which will contain the Garage Component with approximately 38 parking spaces to serve the residential, commercial and institutional tenants of the Project, and the Clinic Component consisting of two-stories, contains approximately 6,000 square feet per story, for a total of approximately 12,000 square feet. The foundation of the Building must be sufficient to accommodate the construction of a third story of approximately 6,000 square feet in the future.

(2) On the Haviland Street level, the property may be improved on the land not used for the Building by a vehicular access way and landscaped open space. Provided however, that the land between the Building and the entire adjacent property and building now known as 13 Haviland Street, shall remain open space with tree and yew plantings and other consistent open space improvements. No vehicles, parking, storage, including trash or dumpsters, shall be allowed at any time on that part of the property located between the Building and the entire adjacent property and building at 13 Haviland Street.

(3) After completion of the Building, MBH Associates, for nominal consideration or as a donation, will convey to the Fenway Community Health Clinic, Inc., fee title, including appurtenant easements for access, support, utilities, use, maintenance, etc., to the Clinic Component, using air rights or such other acceptable means but not including condominiumization under Chapter 183A of the General Laws, as well as air rights sufficient to construct a third story to contain approximately 6,000 square feet. Fee title to the Garage Component shall be retained exclusively by MBH Associates as part of the Project and shall be subject to Chapter 121A, Chapter 652, and this Second Amendment for the remainder of the period of the tax exemption, as set forth in Section K of the Amended Report and Decision.

(4) Ownership of the Boylston Street Properties and the related parcels which comprise the remainder of the Project,

shall remain exclusively with MBH Associates."

4. Additions to Amended Report and Decision. The Authority further amends the Report and Decision as stated below:

a. By adding after the ninth paragraph of Section D, the following new paragraph:

"Notwithstanding any provisions to the contrary in that 6A Contract between the City of Boston and MBH Associates' predecessors in interest, B&M Associates, dated as of April 24, 1980, upon the commencement of construction of the Building, consisting of both the Garage and Clinic Components, on the Haviland Street Property, MBH Associates thereafter, except as hereafter provided, shall pay in any calendar year, or portion thereof, as a payment pursuant to Chapter 121A, Section 6A, no more than the amount equal to the taxes which would have been assessed for each calendar year, or portion thereof, upon the real estate included in the Project, as changed by this Section Amendment, and tangible personal property of MBH Associates used in connection with the operation, maintenance and management of the Project if such real estate and personal property had not been exempt from Chapter 59 taxation (the "Chapter 59 Maximum Payment Provision"). In the event that MBH Associates, by and through its contractors, after commencement does not diligently proceed with the construction of the Building and complete the same in accordance with the terms of the Regulatory Agreement, required by Section 6(c) of this Second Amendment, the Authority's Director may by written notice to the Commissioner of Assessing direct that the Chapter 59 Maximum Payment Provision not be applied for such period or period(s) as he shall determine, including the full remainder of the period of tax exemption for the Project. The 6A Contract, required by Section 6(d) of this Second Amendment, shall include provisions to implement the foregoing."

b. By adding after the third paragraph of Section E, en-

titled "Cost of the Project", the following new paragraph:

"The cost of the construction of the Building, consisting of both the Garage and Clinic Components, on the Haviland Street Property has been realistically estimated to be approximately \$1,500,000. Notwithstanding any provisions of the Amended Report and Decision to the contrary, MBH Associates may grant a mortgage or mortgages to finance the construction of the Building to institutional lenders."

5. Environmental Considerations. Pursuant to the provisions of Section 61 of Chapter 30 of the General Laws, as amended, the Authority hereby finds and determines that the Project, as changed by this Second Amendment, will not result in significant damage to or impairment of the environment and further finds and determines that all practicable and feasible means and measures will be utilized by MBH Associates to avoid or minimize damage to the environment in accordance with the Regulatory Agreement required hereunder.

6. Rules and Regulations. Notwithstanding the minimum standards for financing, construction, maintenance and management of the original Project and any other rules and regulations, as set forth or referred to in the Amended Report and Decision, the Authority hereby imposes as additional rules and regulations on the Project, as changed by this Second Amendment, and requires MBH Associates, prior to filing an application to the Inspectional Services Department of the City of Boston for any building permit, to: (a) submit to the Authority for its review and approval all plans and specifications for the Project as changed herein, accept such changes and modifications thereto as the Authority may deem necessary and appropriate, and adhere to such design review controls and requirements as the Authority may in its discretion impose; (b) enter into a Memorandum of Understanding with the Fenway Community Health Center, Inc., the terms and conditions of which are acceptable to the Authority's Director, in his discretion; (c) enter into a Regulatory Agreement with the Authority for the Project as changed herein pursuant to the requirements of Sec-

tion 18C of Chapter 121A and containing such other terms and conditions, not inconsistent with this Second Amendment, as the Authority's Director in his discretion deems necessary and appropriate, which shall supersede and replace in its entirety any other Regulatory Agreement previously executed between the Authority and B&M Associates or MBH Associates; (d) enter into a new 6A Contract with the City of Boston (the "City") in accordance with Section 6A of Chapter 121A, the terms and conditions of which must be acceptable to the Commissioner of Assessing and shall not be inconsistent with this Second Amendment, which shall supersede and replace in its entirety that certain 6A Contract between B&M Associates and the City, dated as of April 24, 1980; and (e) pay all amounts due or to become due to either the Department of Revenue, Commonwealth of Massachusetts, under Section 10 of Chapter 121A or the City under Section 6A of Chapter 121A. If there is an inconsistency between the provisions of the Memorandum of Understanding, referred to in 6(b) above, the Regulatory Agreement, referred to in 6(c) above, the provisions of the Regulatory Agreement shall apply and govern.

7. Additional Zoning Code Deviations. Notwithstanding the zoning code deviations granted in the Amended Report and Decision, the Authority hereby finds and determines that those additional deviations from the Boston Zoning Code, as amended, set forth in Exhibit "A", attached hereto and incorporated as a part hereof, are necessary for carrying out of the Project as changed by this Second Amendment and therefore are granted without substantially derogating from the intent and purposes of applicable laws, codes, ordinances and regulations, respectively.

8. Severability. In the event any provision of this Second Amendment shall be held invalid or unenforceable on its face or as applied by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

EXHIBIT "A"

Additional Boston Zoning Code Deviations

In order to carry out the construction of the Building, including both the Garage and Clinic Components, on the Haviland Street Property within the Project area, permission is hereby granted for the Project as changed by this Second Amendment to deviate from the following provisions of the Boston Zoning Code, as amended:

Article 3 Zoning Districts

Permission to use the Haviland Street Property, which is located in a parking restricted district for parking.

Article 20 Rear Yards

Permission to waive all rear yard requirements for the Haviland Street Property.

Article 21 Setbacks

Permission to waive all setback requirements for the Haviland Street Property.

Article 23 Off-Street Parking

Permission to waive the provisions that required parking facilities be provided on the same lot as the main use. Parking will be provided on the Haviland Street Property for all parcels of the Project Area.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Memorandum") is entered into this 31st day of January, 1989, between the Fenway Community Health Center, Inc., a Massachusetts Charitable Corporation organized pursuant to Chapter 180 of the Massachusetts General Laws, with its principal offices at 16 Haviland Street, Boston, Massachusetts ("Fenway"), and MBH Associates, a Massachusetts Limited Partnership, with its principal place of business c/o Hamilton Realty Company, 39 Brighton Avenue, Boston, Massachusetts 02134 ("MBH").

MBH currently owns fee title to certain real property located in Boston, Massachusetts consisting of four buildings from 1078 to 1330 Boylston Street and a parking lot at 11 Haviland Street (said properties sometime to be referred to herein as, collectively the "Properties"). The Properties are subject to that certain Report and Decision approved by the Boston Redevelopment Authority (the "Authority") on January 24, 1980, under Massachusetts General Laws Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended on March 20, 1984 (said Report and Decision, as amended, to be referred to herein after as the "121A Report"). MBH has applied to the Authority for approval by the Authority of a Second Amendment to the 121A Report (the "Second Amendment"). MBH has requested Fenway to indicate to the Authority Fenway's support for approval by the Authority of the Second Amendment.

In connection with the Second Amendment and in consideration for such support by Fenway, MBH will agree to construct on that portion of the Properties located at 11 Haviland Street (the "Haviland Street Property"), a two-story structure to contain approximately 12,000 square feet of ambulatory health clinic space above the grade level of Haviland Street, approximately 13,000 square feet of contained parking area containing approximately 38 parking spaces which will be below the grade level of Haviland Street, an access-controlled private courtyard area, and a semi-circular access driveway for pick-up and drop-off. Said structure, parking area, private courtyard and semi-circular drive, including all other improvements to be constructed or located thereon, shall be referred to herein as (the "Project").

MBH has caused Urban Access, Inc. (the "Architect") to prepare preliminary plans (the "Preliminary Plans") for the construction of the Project, a copy of which are attached hereto as Exhibit "A".

After completion of the Project, for nominal consideration, MBH will convey to Fenway fee title to the approximately 12,000 square feet of above grade commercial space (using air rights, condominiumization, or

such other means acceptable to the parties) as well as air rights sufficient to construct one additional story to contain approximately 6,000 feet of commercial space above the two stories. The transfer to the Fenway will also include perpetual and exclusive rights for access, use, enjoyment and maintenance of the private courtyard and semi-circular access drive (employing perpetual easements, condominiumization, air rights, or such other means acceptable to the parties). The completed building, the air rights to construct the additional story and the appurtenant rights shall hereinafter be referred to as the "Fenway Parcel" which term shall be included within the defined term "Project" as used herein. Fee title to the parking garage portion of the Haviland Street Property will be held by MBH.

The Project is to be constructed in a manner consistent with architectural and engineering standards necessary to support future construction of one additional floor.

The two-story 12,000 square foot commercial building (including the private park and semi-circular access drive) shall sometimes be referred to herein as the "Building". The below grade parking garage (including separate access drive) shall sometimes be referred to herein as the "Garage".

Among other things, the purpose of this Memorandum is to confirm the understanding of Fenway and MBH that the Project will be constructed, and fee title to the Building will be delivered to the Fenway, in accordance with the general conditions outlined below:

1. MBH agrees to cause the preparation of, and to cause the Project to be completed in accordance with, final plans and specifications in form and substance reasonably satisfactory to Fenway and the Authority (which, together with all amendments thereto approved by Fenway and MBH, are referred to as the "Plans"). MBH agrees to cause its architect, engineers and other design professionals to work with Fenway and its designees so that the Plans are reasonably suitable for the Fenway to add finish work not included with the Plans, but necessary to equip the Building as a facility for an ambulatory health care clinic with administrative offices, and such other uses as are incidental thereto ("Fenway's Development"). Fenway acknowledges and agrees that it shall retain its own design professionals (including, without limitation, architects) for the completion of Fenway's Development and MBH has not undertaken any obligation herein to pay for the cost of retaining said professionals.
2. The Building shall be conveyed together with (i) easements for support, access, maintenance, use, etc., (as are incidental to and reasonably necessary for an air rights transfer or other contemplated transfer acceptable to the parties) and (ii) facilities constructed in accordance with the Plans for sanitary sewer, storm water drainage, electrical service, gas, water,

telephone and fire alarm and other utilities, all of the foregoing to be made available directly from public ways or by means of permanent easements satisfactory to Fenway and insurable as appurtenant rights to the Building under a title insurance policy reasonably satisfactory to Fenway.

3. Fenway and its designees (including architectural, engineering, mechanical and similar professionals) shall have the right of access at all reasonable times to the Project for the purposes of inspecting the Project and the construction of the Building, and shall at all reasonable times have the right to inspect the Plans used at the Haviland Street Property for construction; provided that Fenway does not unreasonably interfere with the progress of the Project.
4. The Building will not be acceptable for delivery to the Fenway unless a national title insurance company is willing to issue to the Fenway upon delivery of the deed for the Building an owner's title insurance policy insuring fee title in the Building (including appurtenant easements for access, support, utilities, use, maintenance, etc.) in the Fenway free from all exceptions (other than those exceptions set forth on Exhibit "B"). As applicable, if the parties agree that a condominium form of ownership is acceptable said insurance must provide affirmative coverage that the condominium is validly created and existing under Massachusetts General Laws Chapter 183A (the "Condominium Laws"). In order to enable the Fenway to obtain such a title insurance policy, MBH will execute and deliver to the title insurance company and the Fenway all such necessary documentation including without limitation so-called "mechanic's lien" and "parties in possession" affidavits, and, not later than five (5) days prior to the closing date, an as built survey showing that all buildings are within lot and building lines and showing all easements, improvements, appurtenances, utilities and right-of-way, whether above or below ground, and any required surveyor's certificates.
5. MBH agrees that it shall not construct anything on the Haviland Street Property except in strict conformity with the Plans.
6. The Building will be delivered in broom clean condition free of all construction debris and personal property of MBH and all of MBH's agents, employees, contractors and subcontractors.
7. On or before the closing, MBH shall notify Fenway if it is aware or has any reason to believe that the Building as completed does not comply with all applicable zoning, building, environmental and other laws, regulations, ordinances, all covenants, conditions, restrictions and agreements affecting the Haviland Street Property or its use, or that any certificates, licenses, permits and approvals from any governmental or other authority having jurisdiction over the Haviland Street Property as are

necessary to permit the contemplated use and occupancy of the Building have not been issued or are not in full force and effect, or shall not be in full force and effect on the date of the delivery to the Fenway of the deed to the Building other than those permits and approvals that cannot be delivered upon such date as Fenway's Development will not have been completed therein by that time. MBH agrees to make available to Fenway all such opinions, certifications, representations and warranties pertaining to the compliance of the Project with all applicable zoning, building, environmental and other laws, regulations and ordinances that are required by any and all lenders financing the construction of the Project, provided that MBH is not required to cause such opinions, certifications, representations and warranties to be addressed to and for the benefit of Fenway.

8. On or before the closing, MBH will deliver to Fenway an unqualified Certificate of Substantial Completion (AIA Document G704) from a licensed architect reasonably acceptable to Fenway in form reasonably satisfactory to Fenway to the effect that the Project has been constructed (i) in strict conformity with the Plans, (ii) in a good and workmanlike manner (iii) in conformity with good construction and engineering practices and (iv) in compliance with zoning laws and all other applicable laws, regulations and ordinances.
9. On or before the closing, MBH will deliver to the Fenway (i) an assignment reasonably satisfactory to the Fenway of the Plans, building permit, and all other instruments, permits and approvals as may be required for the conveyance to use by the Fenway of the building for the Fenway's Development; and (ii) a duly executed bill of sale satisfactory to Fenway transferring all personal property shown on or reasonably inferable from the Plans, with a warranty by MBH that it is the owner of such property and that its full right and title thereto and authority to sell the same are free and clear of liens and encumbrances.
10. MBH shall guarantee to Fenway that all construction pursuant to the Plans shall be free of all material defects and that all mechanical, plumbing, electrical and other utility equipment and systems shall be free of any material defects. MBH will transfer and assign to Fenway all warranties and guaranties that may be received by MBH from contractors, subcontractors, manufacturers and/or suppliers and shall obtain consents to said transfer and assignment from the Architect, the general contractor for the Project and such other third-party contractors, subcontractors, manufacturers and/or suppliers as Fenway may reasonably require. Without limitation, MBH will promptly discharge any mechanic's and materialmen's liens against the Haviland Street Property.
11. In the event the Project has not been fully completed in accordance with the Plans, Fenway will have the right, if Fenway elects, to prepare a so-called "punch list" acceptable to Fenway

and MBH containing all items to be completed with each item assigned a value equal to the cost of completing such item. MBH will then be responsible to pay the cost to complete all or any portion of the Project as set forth in the "punch list" within a reasonable period of time not to exceed sixty (60) days after the completion of said "punch list" for non-structural items and one hundred eighty (180) days for structural items.

12. MBH will warrant and represent to the Fenway that no notice has been given to or received by MBH or is threatened to be given, with respect to the possible presence of any such "hazardous materials" or "oil" as those terms are defined in Chapter 21E of the Massachusetts General Laws on the Haviland Street Property. MBH has delivered to Fenway that certain Phase I Environmental Site Assessment for 5-11 Haviland Street, Boston, Massachusetts, dated July 20, 1988, prepared by Certified Engineering & Testing Co., Inc. (the "21E Report"). On or before the closing, MBH will deliver to Fenway an update to the 21E Report dated not more than ninety (90) days prior to the date of the closing and prepared by an environmental engineering firm reasonably acceptable to Fenway confirming that no "hazardous materials" or "oil" as those terms are defined in Chapter 21E of the Massachusetts General Laws are present on the Haviland Street Property, or any portion thereof and otherwise in form reasonably acceptable to Fenway. In the event that prior to the closing any such hazardous materials or oil are discovered on the Haviland Street Property, and MBH elects not to remove the same, the obligation of the Fenway to take title to the Office Unit shall cease, and MBH shall not be in compliance with the terms of the Second Amendment.
13. At the closing, Fenway and Hamilton Realty Management Company, Inc. ("HRMC") which is the management affiliate of MBH, agree to enter into an agreement for HRMC to be retained by Fenway as manager of the Building for as long as MBH owns the controlling interest in the Garage. Compensation to HRMC as manager will be payable monthly in the amount of \$1,000.00. In the event Fenway constructs a third floor during the term of the management agreement, the managerial service is to be performed or be expanded to include the third floor and the monthly management fee shall be increased to \$1,250.00. Commencing with the sixty-first (61st) month of the term of the management agreement, the management fee will be subject to an annual cost of living increase in the same proportion as the Consumer Price Index for all Urban Consumers (CPI-U): U.S. City Average, All Items (unadjusted) (1982-84=100), published monthly by the Bureau of Labor Statistics, U.S. Department of Labor ("Price Index") has increased, if at all, above the Price Index as of the commencement of HRMC's term as manager. MBH, Fenway and HRMC shall agree upon a final budget which shall constitute the standard to which HRMC shall adhere. No expenses may be incurred or commitments made by HRMC in connection with the

Building in excess of One Hundred Ten Percent (110%) of the amount allocated to the various classifications of expense in the approved budget, without the prior written consent of Fenway in each instance. Fenway shall indemnify all HRMC for any expenses, costs or liability sustained or incurred by HRMC by reason of or arising out of HRMC's performance of the duties and obligations required by it under said management agreement, except if caused by HRMC's negligence or misconduct. The services to be performed by HRMC as manager of the Building shall include the following:

- a. To provide for all necessary and appropriate maintenance, security and repair of the common areas of the Building, including, without limitation, the exterior and structure of the Building, the semi-circular access drive, the private courtyard, the elevator, and other common areas. The building equipment, furniture and fixtures, subject to limitations of the then current budget approved by the Fenway and any other limitations imposed by Fenway in addition to those contained herein. On any items of repair, replacement or security, the expense incurred shall not exceed \$500.00 unless specifically authorized in writing by Fenway.
- b. At the election of Fenway, to procure and maintain at Fenway's expense public liability insurance with such companies and in such amounts as shall be acceptable to Fenway, insuring against liability for bodily injury and injury to property sustained by any person, firm or corporation, not an employee of Fenway or HRMC. Fenway and HRMC shall each be named as an insured under such policy. HRMC shall cause to be placed and kept in force insurance as required by law and needed adequately to protect Fenway, including, but not limited to, Fire and Extended Coverage Insurance, and Burglary and Theft Insurance, with such companies and in such amounts as shall be acceptable to Fenway.
- c. To engage, employ, appoint and discharge personnel and supervise and direct the same with relation to the operation of the Building and to the common areas and facilities.
- d. To provide for all necessary security for the Building.
IF REQUESTED IN WRITING
- e. Within thirty (30) days of the date hereof, and at least thirty (30) days before the beginning of each calendar year, to prepare and itemize statement of estimated disbursements for the new calendar year.
- f. To do all things reasonably requested by Fenway and customarily done by management companies for the proper management of building similar to the Building.

Fenway and HRMC shall enter into a formal management agreement which will more completely evidence the managerial obligation of HRMC.

14. MBH does hereby license the use by Fenway and those claiming by through and under Fenway, upon thirty (30) days written notice to MBH, of the Haviland Street Property for any and all purposes and activities related to the construction of a third floor to the Building prior to completion of the Building by MBH. Upon thirty (30) days prior written notice from Fenway, MBH agrees to cooperate, and to cause its architects, engineers, contractors, employees, agents, invitees and other parties involved with the construction of the Project to cooperate with Fenway should Fenway exercise its rights hereunder. Fenway shall indemnify MBH from any expenses, costs or liability for any damage or injury which arises because of Fenway's exercise of its rights pursuant to this license.
15. MBH agrees that it shall not construct any additions to the Building including without limitation additional floors above the third floor, without the prior written consent of Fenway.
16. MBH agrees to complete construction of the Project and deliver fee title to the Building to Fenway subject to and in accordance with the terms hereof not later than twenty-four (24) months after approval of the Second Amendment by the Authority.
17. In the event that MBH shall not have received all approvals (the "Approvals") necessary to implement the Second Amendment to the M.G.L. c. 121A Agreement and 6A Agreement and Regulatory Agreement thereunder (the "Agreements") and furthermore that any and all relevant, required, customary and necessary documents in relation to said Agreements and Approvals have not been fully executed by all required and necessary parties thereto within a reasonable period of time following execution of this Agreement (the "Execution of Documents"), MBH and/or Fenway shall each have the right to terminate this Agreement by giving to the other written notice to the other prior to said Approvals and said Execution of Documents by any and all necessary parties to said Amendment.
18. The terms, conditions and obligations of this Agreement, which are operative after conveyance of the Building to Fenway shall survive said conveyance and shall not be deemed to have merged into the deed or other instruments of conveyance.
19. MBH and Fenway understand and are aware that the Authority intends to incorporate by reference into the Second Amendment all the terms and conditions of this Agreement and agree that the Authority by doing so shall have the right to do such acts as it deems reasonably necessary to insure compliance by the parties hereto with the terms hereof.

20. MBH and the Fenway agree to execute and deliver any and all documentation necessary to effectuate the purpose of this Memorandum.

MBH ASSOCIATES,

Harold Brown
General Partner

FENWAY COMMUNITY HEALTH CENTER, INC.

By: Dale orlando,
Its: Executive Director
Hereunto duly authorized

ACCEPTED AND AGREES:

BOSTON REDEVELOPMENT AUTHORITY

Exhibit "A"

Preliminary Plans

Title Exceptions

DISCLOSURE STATEMENT CONCERNING BENEFICIAL
INTERESTS CHAPTER 121A PROJECTS IN THE CITY OF BOSTON

- (1) Project: MBH Associates
- (2) Location: 1080-1130 Boylston Street, Boston, MA
- (3) Owner/121 Entity: MBH Associates
- (4) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (including the amount of their beneficial interest accurate to within one-half percent) in the above-listed Project and/or Owner/121 Entity are listed below.

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENTAGE INTEREST</u>
Harold Brown	39 Brighton Avenue, Boston, MA	90%
R. J. Samia Associates	1500 S. Ocean Blvd., Boca Raton, FL	10%
Robert J. Samia	1500 S. Ocean Blvd., Boca Raton, FL	99.876%
David Samia	130 Bedford Street, Burlington, MA	.062%
Leonard Samia	21 Linden Street, Allston, MA	.062%

If additional space is required, attached separate sheets.

- (5) No member official or employee of the Boston Redevelopment Authority or the City of Boston (collectively "Public Bodies") has any beneficial interest, direct or indirect, in the above-listed project and/or the Owner/121 Entity, nor has any member, official, or employee of the Public Bodies participated in any decision relating to the Project or the Owner/121 Entity which affects his or her beneficial interest, direct or indirect, or the interest of any corporation, partnership, or association in which he or she, directly or indirectly, holds an "interest" as such term is defined in Chapter 268A of the Massachusetts General Laws, as amended.

* R. J. Samia Associates consists of Robert J. Samia, David Samia and Leonard Samia, whose percentage of ownership is set forth above.

Signed under the penalties of perjury.

Signature: _____

Harold Brown, General Partner

Date: 1/18/84

Signature: _____

Date: _____

MEMORANDUM

FEBRUARY 16, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM D. WHITNEY, ASSISTANT DIRECTOR FOR
DEVELOPMENT AND URBAN DESIGN
PETER DREIER, DIRECTOR OF HOUSING

SUBJECT: SECOND AMENDMENT TO THE REPORT AND DECISION ON THE
MBH ASSOCIATES CHAPTER 121A PROJECT

EXECUTIVE
SUMMARY:

The proposed Second Amendment to the Report and Decision authorizes certain changes to the Chapter 121A Project, as previously approved, including the construction, on an existing open lot at 5-11 Haviland Street, of one building consisting of both a below grade parking facility for up to 38 vehicles and a two-story, approximately 12,000 square foot, health clinic and related institutional use facility (the "health clinic"). The health clinic will be conveyed to the Fenway Community Health Center, Inc. upon completion and released from the Chapter 121A Project.

On October 13, 1988, the Authority held a public hearing to consider an application filed by MBH Associates for approval of certain changes to its Chapter 121A Project (the "Project") which was originally approved by the Authority in January, 1980. After the close of the public hearing, the Authority voted to authorize the preparation of a favorable amendment to the Report and Decision, as previously amended, on the Project (the "Report & Decision"). Enclosed herewith is the proposed Second Amendment to the Report & Decision (the "Second Amendment") for consideration.

The original Project Area consisted of five parcels in the Fenway Urban Renewal Area, on the block bounded by Boylston Street, Massachusetts Avenue, Hemmenway and Haviland Streets (respectively, Parcels 13B, 13C, 13D, 13E and 13F). The existing four buildings on Parcels 13B, 13C, 13D and 13E were to be rehabilitated for 44 rental apartments and commercial space on the ground floors. Parcel 13F, located at 5-11 Haviland Street (the "Haviland Street Property"), was restricted to use as an open parking lot to serve primarily the residential and commercial tenants of the Project.

The Second Amendment authorizes the construction of one building on the Haviland Street Property, consisting of a below grade parking facility for up to 38 vehicles (the "Garage Component") and above two-stories, approximately 6,000 square feet per story, for the Fenway Community Health Center, Inc. (the "Fenway Health Center"), as a clinic and related institutional use facility (the "Clinic Component"). Also, the foundation of the building will be constructed to accommodate a third story of approximately 6,000 square feet, which the Fenway Health Center will have the option to construct in the future.

When the construction of the building is completed, MBH Associates will convey, for nominal consideration or as a donation, fee title to the Clinic Component to the Fenway Health Center, using air rights or other means, but specifically not including condominiumization under Chapter 183A of the General Laws, as well as air rights sufficient to construct a third story. Upon conveyance to the Fenway Health Center, the Clinic Component will be severed from the Project Area and released from all applicable restrictions and benefits of Chapter 121A. The Garage Component will remain part of the Project.

To facilitate the construction of the building on the Haviland Street Property, the Second Amendment grants certain deviations from the Boston Zoning Code, as amended. A list of the deviations is set forth in Exhibit "A" to the Second Amendment.

Subsequent to the public hearing, MBH Associates has filed with the Authority, as supplementary material, a Memorandum of Understanding, by and between MBH Associates and the Fenway Health Center, dated January 31, 1989, and a Disclosure Statement, dated February 14, 1989, identifying the general and limited partnership interests in MBH Associates. Copies of both documents are enclosed herewith.

As additional rules and regulations, MBH Associates will be required to execute a Regulatory Agreement with the Authority and a new 6A Contract with the City of Boston, all prior to filing any application for a building permit. The proposed building will be subject to ongoing design review by the Authority's Urban Design staff.

The general partner of MBH Associates, Harold Brown, is also a general partner in Atrium On Commonwealth Associates limited partnership ("Atrium Associates"), which is the owner of a Chapter 121A project known as the Atrium, a residential project with approximately 218 units and ground floor commercial space, located on Commonwealth Avenue in Brighton. Atrium Associates intends to submit an application for approval by the Authority in connection with the Atrium project to amend its Report and Decision to incorporate a Chapter 59 limit on 6A payments for that project. Similar to this Project, representatives of Atrium Associates have been advised that it must include a public benefits package for evaluation. This evaluation will include Authority staff review as well as Brighton community review and input.

It is recommended that the Authority adopt the Second Amendment as presented herewith. An appropriate vote follows:

VOTED: That the document presented at this meeting entitled, "Second Amendment to the Report and Decision of MBH Associates for the Authorization and Approval of a Project under Massachusetts General Laws (Ter. Ed.) Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, as amended, to be undertaken and carried out by a Limited Partnership formed under M.G.L. Chapter 109, and Approval to Act as an Urban Redevelopment Limited Partnership under said Chapter 121A" be and hereby is approved and adopted.

BOYLSTON STREET

STREET

HENWAY

HAVILAND STREET

PUBLIC

ALLEY

NO. 909

PARKING - 39 CARS

1120

1122

1124

1126

1128

1130

1132

1134

1136

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SUBJECT: SECOND AMENDMENT TO THE REPORT AND DECISION ON THE
MBH ASSOCIATES CHAPTER 121A REPORT

Attached hereto is a projected total value of current payments under Chapter 121A, payments projected under Chapter 59 and the difference between these two figures which totals \$270,472 at a 10% discount rate throughout 1995, when the 121A designation terminates.

To be included with the Board Memorandum of February 16, 1989.

FEMMAY HEALTH CLINIC

PAGE 2

19-Oct-87

PROPERTY TAX CALCULATION

YEAR	P.I.L.O.T.	CHAPTER 59	SAVINGS
1986	\$102,869	\$57,000	\$45,869
1987	\$104,926	\$58,140	\$46,786
1988	\$107,025	\$59,303	\$47,722
1989	\$109,165	\$60,489	\$48,677
1990	\$111,349	\$61,699	\$49,650
1991	\$113,576	\$62,933	\$50,643
1992	\$115,847	\$64,191	\$51,656
1993	\$118,164	\$65,475	\$52,689
1994	\$120,527	\$66,785	\$53,743
1995	\$122,938	\$68,120	\$54,818

NPV SAVINGS 1988 TO 1995:
(10% DISCOUNT RATE)

\$270,472